

BEFORE THE DIVISION OF MEDICAL QUALITY

MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition)	
for the Reinstatement of Revoked)	MBC Case No.04-93-29958
Certificate of:)	
)	
Jose Y. Zaguirre, Jr., M.D.)	OAH No.L-62814
P.O.Box 2335)	
La Habra, Ca 90632)	
)	
Certificate No. A-019532,)	
)	
Petitioner)	
)	

DECISION DENYING 2nd PETITION FOR REINSTATEMENT

This second petition for reinstatement of a revoked license was originally heard by Richard E. Ranger, Administrative Law Judge of the Office of Administrative Hearings, on March 24, 1994 at Los Angeles.

The ALJ issued a Proposed Decision which was reviewed by Panel B of the Division of Medical Quality. Panel B voted not to adopt the Proposed Decision recommending reinstatement of license on probationary terms and conditions. Panel B proceeded to decide the case itself upon the record, including the transcript. The parties were afforded the opportunity to present both written and oral arguments before Panel B itself.

On November 3, 1994, at San Diego, California, oral arguments were held before Panel B. Deputy Attorney General Cindy Lopez presented argument in behalf of the California Attorney General. Stanley R. Hartford, Attorney at Law, presented argument in behalf of petitioner Jose Y. Zaguirre, who chose not to be present at this hearing.

Having reviewed the entire matter, Panel B now makes this decision:

FINDINGS OF FACT

1. Petitioner Jose Y. Zaguirre, Jr., 67, was licensed as a physician and surgeon in California on December 14, 1960 under certificate no. A-019532. The certificate continued in effect until 1988.

2. Effective July 20, 1988, in agency case no. D-3548, (OAH No. L-38347), petitioner's certificate was revoked based upon a 1985 felony conviction of committing a crime of oral copulation with a female minor. The minor was not a patient.

3. Petitioner's conviction occurred in Orange County. On December 11, 1985 in Orange County Superior Court, petitioner entered a plea of guilty to a felony count of violating Penal Code section 288a(b) (1) (oral copulation of a person under 18 years of age). He was thereafter sentenced to state prison for 16 months and on July 20, 1986 was released from prison on 3 years parole. In August 1986, he paid \$35,000 to the victim. On August 19, 1987, after 13 months, petitioner's parole was terminated and there is no evidence of subsequent offenses.

4. The facts of petitioner's offense are that in December 1984, petitioner engaged an 11 year old neighborhood girl to do yard work and other work for him at his home. On December 31, 1984, petitioner molested the child in his home and took photos of her genital area. He was subsequently arrested at which time a substantial number of pornographic and kiddie porn films were found in petitioner's home, along with numerous photos of nude women.

5. Petitioner's pending petition was filed in June 1993. It is petitioner's second petition submitted to the Board since revocation. The prior petition was filed in December 1989, and was heard by a Medical Quality Review Panel in April 1990. The petition was denied by the Board effective June 6, 1990. The Panel and Board found that petitioner did not show sufficient rehabilitation at that time.

6. In this case, the petition is supported by recommendation letters from psychiatrist Seawright W. Anderson, M.D. of Santa Ana, and psychiatrist Robert Weinstock, M.D. of Westwood Village. Both practitioners indicate evaluating petitioner and the opinion that he is ready to resume medical practice again. Dr. Anderson reports seeing petitioner 24 times between October 1989 and June 1993. Dr. Weinstock testified to 8-9 psychiatry sessions with petitioner. He does not consider petitioner a pedophile, or a sex offender.

7. Petitioner was an anesthesiologist in solo private practice in Los Angeles, San Bernardino and Imperial Counties prior to revocation of his license in July 1988. He has not practiced medicine or been associated with medical practice since that time.

8. Petitioner's case involving the female minor arose during a time of marital discord in petitioner's life and has been characterized as a situational reaction to marital problems. He has been evaluated by therapists and after incarceration has been undergoing psychotherapy with Dr. Seawright Anderson since 1987. Petitioner was separated from his wife at or near the time of his offense, and subsequently divorced, and has been reconciled with her since 1984. He was re-married to her in 1986.

9. Petitioner has maintained some degree of medical currency since revocation by taking and completing continuing medical education courses and reviewing medical and anesthesia textbooks and publications. He reports CME courses in anesthesiology taken at University of California Irvine and Cedars-Sinai Medical Center in 1989, a course in Hepatitis B Prevention in 1989, Anesthesia Practice at Monterey in 1989, a course in AIDS in 1990, courses in Primary Care at Loma Linda University School of Medicine in 1991, 1992 and 1993, and a course in Anesthesia and Perinatology in 1993 at Indian Wells.

10. Petitioner is a graduate of the University of Santo Tomas Faculty of Medicine and Surgery in Manila, Philippines. He interned at the University of Santo Tomas Hospital in 1952, and thereafter at St. Mary's Hospital in East St. Louis. He was in a surgery residency at St. Mary of Nazareth Hospital in Chicago in 1955, at Missouri Pacific Hospital in St. Louis in 1956, and thereafter in residency at the University of Chicago in anesthesiology. He is not board certified. There is no evidence of a disciplinary offense by petitioner prior or subsequent to the offense which formed the basis for his conviction and revocation.

11. In his testimony, petitioner continues to minimize the incident by referring to it as merely kissing an 11-year old child for a few seconds, rather than an act of oral copulation which drew him a prison term. Petitioner still maintains that this 11 year old child initiated the sex act and initiated the picture taking of her nude body. To this day, petitioner suggests that it was the 11 year old child who manipulated a 60 year old man into committing sexual misconduct of a flagrant nature.

DETERMINATION OF ISSUES

Petitioner has the burden to establish good cause and rehabilitation to the extent that he should be reinstated. He has not satisfied this burden. He refuses to take blame and responsibility for his wrongdoing. He minimizes his misconduct. He shows little or no remorse.

ORDER

The petition of Jose Y. Zaguirre for reinstatement of revoked certificate is denied.

This decision shall become effective on January 26, 1995

So Ordered December 27, 1994

Division of Medical Quality
Medical Board of California

By Karen L. McElliot

BEFORE THE DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for)	
Reinstatement of Revoked Certificate:)	No. L-62814
)	
JOSE Y. ZAGUIRRE, JR., M.D.)	
Certificate No. A-19532)	NOTICE OF NON-ADOPTION
)	OF PROPOSED DECISION
Respondent.)	
)	

NOTICE TO ALL PARTIES:

You are hereby notified that the Division of Medical Quality voted not to adopt the proposed decision recommended in this case. The Division itself will now decide the case upon the record, including the transcript.

To order a copy of the transcript, please contact the Transcript Clerk, Office of Administrative Hearings, 314 West First Street, Los Angeles, CA 90012, (213 620-4650).


After the transcript has been prepared, the Division will send you notice of the deadline date to file your written argument. Your right to argue on any matter is not limited. The Division is particularly interested in arguments on why a different decision should not be made.

In addition to written argument, oral argument may be scheduled if any party files, with the Division, a written request for oral argument within 20 days from the date of this notice. If written notice is filed, the Division will serve all parties with written notice of the time, date and place of hearing.

Please remember to serve the opposing party with a copy of your written argument and any other papers you might file with the Division. The mailing address of the Division is as follows:

Division of Medical Quality
Medical Board of California
1426 Howe Avenue, Suite 54
Sacramento, CA 95825
(916) 263-2524

Dated: August 4, 1994


JOHN C. LANCARA
Chief of Enforcement
Division of Medical Quality
Medical Board of California

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P. O. Box 2335)
La Habra, CA 90632)
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Certificate No. A-019532,)
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OAH No. L-62814

PROPOSED DECISION

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DETERMINATION OF ISSUES

Petitioner evidences substantial rehabilitation at this time. It has been 9-1/2 years since the offense, 8-1/2 years since the molestation conviction, and 6 years since revocation of petitioner's license. Parole was completed in 1987, there are no criminal cases which have been filed against petitioner, there is no evidence of any malpractice claims or suits against petitioner, nor is there evidence of drug addiction or mental illness. Petitioner's therapists are of the opinion that petitioner is ready to return to practice; his family life is stable, and nothing in the evidence suggests or indicates a probability of a repeat of the type of incident which resulted in petitioner's license revocation.

The public interest would not be disserved by reinstatement of petitioner's license on probation for a short term subject to an oral or written examination as a condition precedent, a chaperone condition, and standard conditions of probation.

DISPOSITION

The petition of Jose Y. Zaguirre, M.D. for reinstatement of Certificate no. A-019532 is denied. However, the order of denial is stayed and the certificate is reinstated on probation for two (2) years subject to the following condition precedent and probationary conditions:

1. Within 60 days from the effective date of this decision, petitioner shall take and pass an oral or written examination in a subject to be designated and administered by the Division of Medical Quality or its designee. If petitioner fails the examination, petitioner must take and pass a re-examination consisting of a written as well as an oral examination. The waiting period between repeat examinations shall be at three month intervals until success is achieved. Petitioner shall pay the cost of the first examination and the cost of any subsequent re-examination.

2. Petitioner shall not practice medicine until he has passed the required oral or written examination and has been so notified by the Division in writing. Failure to pass the required examination no later than 100 days prior to the termination date of probation shall constitute a violation of probation.

3. During probation, petitioner shall have a third party present at all times while examining or treating minor or female patients.

4. Petitioner shall obey all federal, state and local laws, and all rules governing the practice of medicine in California.

5. Petitioner shall submit quarterly declarations under penalty of perjury on forms provided by the Division, stating whether there has been compliance with all the conditions of probation.

6. Petitioner shall comply with the Division's probation surveillance program.


7. Petitioner shall appear in person for interviews with the Division's medical consultant upon request at various intervals and with reasonable notice.

8. The period of probation shall not run during the time petitioner is residing or practicing outside the jurisdiction of California. If, during probation, petitioner moves out of the jurisdiction of California to reside or practice elsewhere, petitioner is required to immediately notify the Division in writing of the date of departure, and the date of return, if any.

9. Upon successful completion of probation, petitioner's certificate will be fully restored.

10. If petitioner violates probation in any respect, the Division, after giving petitioner notice and the opportunity to be heard, may revoke probation and carry out the denial order that was stayed. If an accusation or petition to revoke probation is filed against petitioner during probation, the Division shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

DATED: June 1, 1994


RICHARD E. RANGER
Administrative Law Judge

RER:btm